SUBMISSION

STRATERRA™
NATURAL RESOURCES OF NEW ZEALAND

Submission to Ministry for the Environment on

"DRAFT EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF (ENVIRONMENTAL EFFECTS) – DISCHARGE AND DUMPING REGULATIONS 2014" (MARCH 2014)

INTRODUCTION

1. Straterra[1] welcomes the opportunity to submit on the exposure draft[2] of Exclusive Economic Zone and Continental Shelf (Environmental Effects) – Discharge and Dumping Regulations 2014. Our submission is confined to the regulation of discharges[3] of harmful substances.

2. Straterra submits from the point of view that the EEZ environmental effects regime needs to be fair, reasonable and workable to minerals prospectors, explorers and miners (and for marine scientific researchers), while furthering the purpose of the governing legislation.

3. In preparing this submission, Straterra has consulted with its members having an interest in the oceans, in particular, Chatham Rock Phosphate, and Trans-Tasman Resources. We appreciate the direct engagement invited with Ministry for the Environment officials prior to lodging this submission, and look forward to that engagement continuing as the regulations are finalised.

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[1] Straterra represents NZ minerals production, exploration, research, engineering and geotechnical services, equipment suppliers, and ancillary services and support http://www.straterra.co.nz/About+Straterra

[2] HTTP://WWW.MFE.GOVT.NZ/ISSUES/OCEANS/CURRENT-WORK/DRAFT-REGULATIONS-EEZ-DISCHARGE-DUMPING-DOCUMENT.PDF

[3] See definitions in section 5 of http://www.legislation.govt.nz/act/public/2013/0085/latest/DLM5644760.html?search=ta_act_E_ac%40ainf%40anif_an%40bn%40rn_25_a&p=2

EXECUTIVE SUMMARY/DISCUSSION

Overview

4. Straterra supports the Government's proposal to move the regulation of discharges from the Maritime Transport Act 1994 regime into the EEZ environmental effects regime, via regulations. (This work is the second tranche of regulation, following the first set which classifies a number of activities - including minerals prospecting and exploration, and marine scientific research - as permitted, subject to standard conditions.)

5. We raise a number of matters below, with recommendations to improve the workability of the proposed regime. The principal concerns are, in summary:

    - Discharges for mineral mining activities other than ironsands, rock phosphate, and seabed massive sulphides, are to require a marine consent. A mechanism is needed for such to be classified up to specified thresholds as permitted, for parity of treatment, and consistency with government policies;

    - The present process is an opportunity to write fit-for-purpose reporting and notification provisions for permitted activities, for these regulations, and to replace the provisions in the existing permitted activity regulations, which are widely held to be onerous and unsuitable; and

    - The transition provision in clause 31 should be altered to provide for any harmful substance - that has been described in a marine consent application lodged before the entry into force of the regulations - as not requiring an additional marine consent.

Definitions

6. The definitions of discharges and dumping (EEZ and Continental Shelf (Environmental Effects) Amendment Act 2013), and of "harmful substance" and "operational chemicals from mineral mining operations" (draft regulations) are generally supported.

7. The connection between "sediments from mineral operations", and tailings from the same (section 4 (d) and (e) of the draft regulations) should be clarified, to avoid confusion. We also suggest developing definitions of "sediment" and "tailings", in consultation with industry, to arrive at definitions that are consistent with industry's understanding of these terms.

8. MfE's proposal to amend "mineral operations" to "mineral mining activities" is supported, as providing greater precision, noting that this term includes prospecting and exploration activities.

9. MfE's view that discharges into the EEZ from seabed mining within the territorial sea would be treated as discharges under the draft regulations, while such discharges from mining on land would be treated as dumping, is supported.

Permitted discharges of sediments

10. Sections 6-8 of the draft regulations provide for discharges from ironsands, rock phosphate, and seabed massive sulphide activities to be classified as permitted, within specified thresholds. The thresholds were determined on the basis of science-based, expert opinion by the National Institute of Water and Atmospheric Research, which we understand was independently peer reviewed by Associate Professor Conrad Pilditch of the University of Waikato.

11. On the specified thresholds in section 6-8, Straterra has a concern. The phrase "less than 1000 tonnes of sediment within a single permit area" (e.g., section 6 (1)) is an approach that does not recognise, or assist, the way exploration works. Permit areas may vary greatly in extent and it would be more appropriate to place limits on discharges on a per hectare basis, drawing on the NIWA analysis.

12. Any other issues to do with sections 6-8 would be a matter for submission by individual companies.

Discretionary discharges of sediments and tailings

13. Mineral mining activities other than ironsands, rock phosphate, or seabed massive sulphides are proposed to be classified as discretionary in the regulations (section 9). On the face of it, that amounts to unfair discrimination against other fields of endeavour that might occur in the future, e.g., placer gold; manganese nodules and crusts; methane hydrates.

14. MfE has explained that an activity may be classified as permitted, only if it is known that its effects are no more than minor, or can be managed in a way that the effects are no more than minor. Where the risk assessment has not been carried out, a classification of permitted is not possible. The explanation is accepted, however, does not solve the problem.

15. As matters stand, an exploration project for minerals other than those identified in sections 6-8 of the draft regulations would require a marine consent, for any and all discharges. That goes

against the Government's rationale[4] for minerals exploration activities to be classified as permitted.

16. On that basis, it is reasonable for the minerals sector to expect a positive resolution of the issue. We contend that industry-specific inputs are required to achieve that positive resolution, and would welcome the opportunity to provide that expertise.

17. By way of starting a discussion, we suggest a compromise. Regulations could be developed for specific activities (section 29 (1) (b) of the EEZ and Continental Shelf (Environmental Effects) Act 2012)[5] as the need arises. At issue are how that process would be triggered, and the time it would take to develop a new regulation to cover, say, discharges from placer gold mining in the EEZ.

18. We propose that an application for approvals[6] to prospect or explore for activities not covered under sections 6-8 of the draft regulations should be entitled to receive from MfE the writing of a specific regulation (at MfE's cost) to provide for permitted discharges, subject to the applicant providing a risk assessment (at the applicant's cost), to the standard of the peer-reviewed NIWA work. MfE would face a statutory time frame to deliver the enabling regulation (with leeway to cover force majeure events and the like).

Reporting and notification requirements

19. The Ministry is aware of widely-held views within industry that the reporting and notification requirements under the existing regulations are unnecessarily onerous and not fit for purpose. That same consideration applies to sections 10-12 of the draft regulations.

20. As an example, it is unreasonable to require NIWA to send more than 100 separate emails to Maori groups around the country every time a NIWA research vessel puts to sea. (MfE has informed Straterra that, for their part, many Maori groups would prefer to not receive these emails.)

21. We are also aware of a situation in which NIWA was offered research work by a private company, however, declined to take it up because the permitted-activity notification and

[4] Regulatory Impact Statement for regulations under the EEZ environmental effects regime https://www.mfe.govt.nz/issues/oceans/current-work/ris-regulations-under-the-exclusive-economic-zone-continental-shelf-act.pdf

[5] http://www.legislation.govt.nz/act/public/2012/0072/latest/DLM3955428.html?search=ta_act_E_ac%40ainf%40anif_an%40bn%40rn_25_a&p=2

[6] e.g., for an exploration permit from NZ Petroleum & Minerals

reporting requirements are overly onerous. The company was unable to get the research done. This is of benefit to no one.

22. MfE has indicated its intent to amend in due course the reporting and notification requirements in the existing regulations, which would then be extended to the regulations on discharges and dumping. That is a welcome proposal.

23. An alternative solution would be to write fit-for-purpose provisions into the discharge and dumping regulations, and then use those to replace the provisions in the existing permitted activity regulations.

24. As a general principle, reporting and notification should not be required for a permitted activity, except, perhaps, to the Environmental Protection Authority.

Transitional provision about discharge of tailings and sediments

25. Section 31 provides transitional arrangements for marine consent applications that had been lodged with the EPA prior to the entry into force of the regulations. It provides that discharges of tailings and sediments in this circumstance would not require an additional marine discharge consent for any discharges of tailings and sediment already described in the marine consent application. Straterra suggests that the transitional provision should provide more broadly for the discharge of all harmful substances, not just tailings and sediment.

RECOMMENDATIONS

25. Straterra recommends the Ministry for the Environment to:

a) Note Straterra's support for moving the regulation of discharges from the Maritime Transport Act 1994 regime to the EEZ environmental effects regime, via regulations, as logical and sensible;

b) Note Straterra's support of proposed definitions, and of the Ministry's intention to replace the term "mineral operations" with "mineral mining activities";

c) Agree to clarify the connection between or difference between "sediments" and "tailings" in relation to mineral mining activities, for ease of interpretation;

d) In relation to Rec. (c), agree to develop definitions of "sediment" and "tailings" in consultation with industry;

e) Note Straterra's support for discharges from ironsands, rock phosphate, and seabed massive sulphide activities to be classified as permitted, up to specified thresholds;

f) Agree that to classify discharges from mineral mining activities other than ironsands, rock phosphate, or seabed massive sulphides, as discretionary is unfair and unreasonable, and is not supported by government policies in respect of the EEZ environmental effects regime;

g) In relation to Rec. (e), agree to consider this proposal: persons wishing to prospect or explore in the EEZ are entitled to receive from MfE a specific regulation to provide for permitted discharges, subject to the applicant providing an adequate risk assessment, with the regulation to be delivered within a statutory time frame;

h) Agree that the proposed provisions for reporting and notification are unnecessarily onerous for persons carrying out permitted activities, and are not fit-for-purpose;

i) In relation to Rec. (g), agree to develop fit-for-purpose provisions for these regulation in consultation with industry, which could then be rolled into the existing permitted-activity regulations;

j) Agree that reporting and notification should not be required for a permitted activity, except, perhaps, to the Environmental Protection Authority; and

k) Agree to replace all instances of the words "sediment and tailings" in section 31 with "harmful substances", to provide for broad applicability of coverage of the transition provision.